

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

IN THE MATTER OF :
2004 HARLEY DAVIDSON :
VIN# 1VF9FV31A84R116374 : **C.A. No: 08M-01-004 (RBY)**
: :
Petitioner: Joseph C. Jackson :

Upon Consideration of
Petitioner's Motion for Consideration
DENIED

OPINION AND ORDER

Submitted: January 3, 2011
Decided: February 2, 2011

Joseph C. Jackson, *pro se* Petitioner.

Robert J. O'Neill, Jr., Esq., Department of Justice, Wilmington, Delaware.

Young, J.

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SUMMARY

In December of 2008, petitioner, Joseph C. Jackson, pled guilty to two counts of Delivery of Cocaine.¹ As a result of that conviction, the police confiscated the Petitioner's Harley Davidson motorcycle under the theory that it was paid for using money earned by the Petitioner selling drugs. Mr. Jackson filed a petition for the return of property, pursuant to 16 *Del. C.* §4784(j).

On July 23, 2010, Commissioner Freud issued an order finding that "the State has met its initial burden to establish probable cause to have initiated the forfeiture proceeding and that Petitioner has failed to prove that the motorcycle was purchased with legitimate income and therefore not subject to forfeiture."² The Commissioner denied the petition. The Petitioner has raised five objections to the denial of his petition: (1) the State violated forfeiture procedures by using certified mail instead of first class mail to send the notice of forfeiture; (2) the State violated forfeiture procedures by not filing an in rem application to complete the forfeiture proceedings; (3) the Commissioner failed properly to apply the probable cause standard; (4) the Petitioner was unconstitutionally denied procedural due process; and (5) the Commissioner exhibited a closed mind.

¹ *Jackson v. State*, 2009 WL 2859174 (Del. Super.

² *In the Matter of 2004 Harley Davidson Motorcycle VIN No. IV9FV31A84R116374*, C.A. 08M-01-004 (Del. Super.)(ORDER).

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FACTS

The Commissioner laid out the facts of this case in great detail in an order dated July 23, 2010;³ therefore, I will give only a brief recitation of the facts. Detective Voshell, a veteran of the State police with seven years experience in the drug unit, made five separate purchases of cocaine from the Petitioner using a confidential informant. In total, the confidential informant purchased \$1,300 of cocaine from the Petitioner. As a result of these controlled buys, Detective Voshell applied for a search warrant for Petitioner's residence and vehicles.

On August 7, 2007, the search warrant was executed, and the police recovered cocaine, prescription pills, over \$1,000 in cash, and what appeared to be a bevy of stolen goods. During the course of the investigation, Detective Voshell learned that the Petitioner owned a rather expensive motorcycle. Although the police were unable to locate the motorcycle at the time of the initial search warrant, it was discovered and seized on November 4, 2008. On December 16, 2008, Petitioner entered a plea of guilty to two counts of delivery of cocaine and was sentenced to 12 years in prison.

At the hearing, for his motion for return of property, the plaintiff presented only one witness – himself. He stated that he made the money to purchase the motorcycle by gambling at Dover Downs, and purchased it from his cousin. At the conclusion of the hearing, the Commissioner found that there was ample evidence to support forfeiture pursuant to 16 *Del. C.* § 4784(a)(7). The statute reads as follows:

³ *Id.*

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(7) All moneys, negotiable instruments, securities or any other thing of value furnished, or intended to be furnished, in exchange for a controlled substance or drug paraphernalia in violation of this chapter; all profits or proceeds traceable to securities, assets or interest used, or intend to be used, to facilitate any violation of this chapter

STANDARD OF REVIEW

Jackson has filed written objections to the Commissioner's Order, which are being treated as a motion for reconsideration pursuant to Superior Court Civil Rule 132(A)(4). When a Commissioner's decision is case dispositive, this Court must carefully review the record *de novo*. The judge is permitted to "accept, reject, or modify, in whole or in part, the findings ... made by the Commissioner."⁴ Additionally, when reviewing the Commissioner's order below this Court may receive further evidence.

DISCUSSION

Procedurally, in forfeiture proceedings "[o]nce the government has met its burden of showing probable cause, the burden shifts to the claimant to show by a preponderance of the evidence that the property was not subject to forfeiture." The Petitioner must show by a preponderance of the evidence: (1) that he has the lawful possessory interest in the seized property; and (2) the property was unlawfully seized or not subject to forfeiture pursuant to the forfeiture statute. I will address, in order,

⁴ Super. Ct. Civil R. 132(a)(iv).

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the Petitioner's five objections to the underlying decision.

I. State failed to use first class mail service

The Petitioner's first contention, that the State violated forfeiture procedures by not using first class mail, is without merit. The Petitioner correctly recites the rule stated within Superior Court Civil Rule 71.3: That notification should be sent to all incarcerated parties, with a possessory interest, via first class mail. The State admittedly mailed notice to the Petitioner using certified mail. Well-settled Delaware case law defines certified mail as: "First class mail for which proof of delivery is secured but no indemnity value is claimed."⁵ Plainly stated, certified mail is first class mail that requires proof that it was delivered. Therefore, the Petitioner's first objection is without any merit, as the State in fact followed the notification process as put forth by Rule 71.3.

II. State failed to file an in rem application

Next, the Petitioner contends that the forfeiture process was insufficient due to the State's failure to file an in rem application. This argument is no more persuasive than the last. The only mention of an in rem application within Rule 71.3 is that "[a]t anytime after the expiration of 45 days from the date of last notice ... the State may obtain an order from the Superior Court forfeiting property ... by filing, costs prepaid, an application in rem with the Superior Court." This subsection deals exclusively with the possibility that no petition for the return of forfeited property

⁵ *Leatherbury v. Greenspun*, 939 A.2d 1284, *1288 (Del. 2007); (citing <http://merriam-webster.com/dictionary/certifiedmail>).

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was made. However, in the case *sub judice* the Petitioner filed a petition. Therefore, an in rem application was not necessary, and this objection is invalid.

III. The Commissioner failed to properly apply the probable cause standard

Third, the Petitioner alleges that the Commissioner “leapfrogg[ed] over the issue of whether the initial seizure was legal.”⁶ In support of this contention the Petitioner quotes language from the Commissioner’s Order stating that no testimony was presented linking the motorcycle to the sale of illegal drugs. Fatally, for this objection, however, is that the State never sought to seize the motorcycle as a result of it being used in drug sales. In fact, the State sought forfeiture of the motorcycle on the theory that the Petitioner purchased it with the proceeds of drug sales, a well recognized ground for forfeiture under 16 *Del. C.* § 4784(a)(7).

Sufficient evidence was put forth by the State at the hearing to justify forfeiture of the motorcycle. The probable cause standard applicable in a motion for the return of property is essentially the same as that applied in Fourth Amendment search and seizures.⁷ Therefore, the State need only supply evidence that provides reasonable grounds for believing that the motorcycle was purchased with proceeds from drug sales.

⁶ Pet’r’s Br. 5.

⁷ *In the Matter of One 1987 Toyota*, 621 A.2d 796, 799 (Del. Super. 1992); see *United States v. One 1974 Porsche 911-S*, 682 F.2d 283 (1st Cir. 1982).

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The State presented the following evidence:

The testimony established that the [Petitioner] was released from prison in February 2006. While the [Petitioner] claimed he was working, he provided no evidence supporting this claim. He has not filed income taxes during the period in question. While the State's record indicates that the last year he filed was 1996, he had no recollection of the year he filed taxes. The [Petitioner] testified that he bought the motorcycle from his cousin for \$19,000.00. The seller of the bike testified that the Petitioner is not his cousin and that he sold the bike to him for \$6,800.00. The \$6,800.00 was in twenty dollar bills. This amount of money is consistent with drug money. During June 2007 and August 2007, the [Petitioner] made direct hand to hand deliveries to Detective Voshell. The drugs purchased were purchased with \$20.00 bills. The State submits that the State has established probable cause to believe the motorcycle was purchased with drug profits or proceeds.⁸

Additionally, the Commissioner noted that the Petitioner's home contained large quantities of items in its original packaging, which is consistent with drug addicts swapping stolen goods for drugs, and he had previously been incarcerated for trafficking and sale of illegal drugs. The Commissioner also concluded that the Petitioner failed to show that he had a legitimate source of income, and also took into consideration the fact that the Petitioner actively hid his motorcycle to avoid seizure.

When considering the totality of the evidence presented, I find that there is reasonable grounds to conclude that the Petitioner purchased the motorcycle with proceeds from the drug trade.

⁸ *In the Matter of One 2004 Harley Davidson Motorcycle*, 08M-01-004, *7(Del. Super. July, 23, 2010)(Commissioner Freud).

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IV. Procedural due process violation

Fourth, the Petitioner contends that the Commissioner incorrectly applied the lesser standard of probable cause. In doing so, the Petitioner believes he has been unconstitutionally deprived of his motorcycle without due process. This argument is not meritorious. The key purpose of forfeiture statutes is to “cripple the trafficking and sale of illegal drugs.”⁹ Forfeitures done pursuant to 11 *Del. C.* § 4784 are civil proceedings, in which the government bears the initial burden of showing probable cause for the institution of the suit.¹⁰ Therefore, the Commissioner applied the correct standard of proof, and there is no valid constitutional argument that can be made.

V. The Commissioner presented a closed mind

Lastly, the Petitioner contends that the Commissioner disregarded evidence that he presented, a fact he believes evidenced the Commissioner’s closed mind. In Delaware the trier-of-fact is the sole judge of the credibility of a witness and is responsible for determining the facts when presented with inconsistencies in evidence.¹¹ During a bench trial the judge is the sole person responsible for resolving conflicts, and is forced to determine the credibility of every witness.¹² At the hearing

⁹ *In the Matter of One 1985 Mercedes Benz Auto.*, 644 A.2d 423, 427-28 (Del. Super. 1992).

¹⁰ *In the Matter of One Toyota*, 621 at *799.

¹¹ *Knight v. State*, 690 A.2d 929, 932 (Del. 1996); *see Carter v. State*, 933 A.2d 774, 777 (Del. 2007).

¹² *Mercado v. State*, 2001 WL 258489, *1 (Del. Super.).

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the Petitioner was the only witness to testify on his own behalf. The Commissioner did not find the Petitioner's testimony credible, in light of the conflicting evidence presented by the State. This does not evidence closed-mindedness, but conversely is a necessary part of presiding over a bench trial. Therefore, the Petitioner has failed to present a valid objection that the Commissioner was closed-minded.

CONCLUSION

For the foregoing reasons, the Petitioner's motion for reconsideration is hereby

DENIED.

SO ORDERED this 2nd day of February, 2011.

/s/ Robert B. Young

J.

RBV/sal

oc: Prothonotary

cc: Robert J. O'Neill, Jr., Esq.,
Joseph